

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg  
MOTORS LIQUIDATION COMPANY, . Chapter 11  
et al., f/k/a GENERAL .  
MOTORS CORP., et al, . (Jointly administered)  
Debtors. . One Bowling Green  
. New York, NY 10004  
Wednesday, November 15, 2017  
9:08 a.m.

TRANSCRIPT OF TELEPHONE CONFERENCE CALL, ON THE RECORD,  
RE: DISCOVERY DISPUTES IN ADVANCE OF DECEMBER TRIAL.  
BEFORE THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commenced at 9:08 a.m.)

2 THE COURT: All right. This is Judge Glenn. We're  
3 on the record in Motors Liquidation Company, 09-50026.

4 Who's going to begin?

5 MR. HILLIARD: The two issues that I have with  
6 Mr. Karlan are pretty short.

7 THE COURT: I'm sorry, I didn't get a name. Who's  
8 speaking? Who's speaking?

9 MR. HILLIARD: Judge, good morning. This is Bob  
10 Hilliard.

11 THE COURT: Okay. Mr. Hilliard, go ahead.

12 MR. HILLIARD: Judge, I have -- we have two issues,  
13 Mr. Karlan and I, that need to be addressed and shouldn't take  
14 too long. By way of background, the deposition of Beth Andrews  
15 is scheduled to begin in about an hour, and this issue is  
16 pertinent to her deposition. And as Mr. Karlan told me this  
17 morning, he would like to get her back to Delaware as soon as  
18 possible, so we're trying not to delay her deposition.

19 There is an email chain, Your Honor, that contains  
20 some redactions that we believe shows that Ms. Andrews approved  
21 -- or would show that Ms. Andrews approved the settlement.  
22 Mr. Karlan has either sent the unredacted copies to the Court  
23 already or has agreed to send them, if the Court requests them,  
24 for the Court's review, in order to determine if those emails  
25 should be immediately produced prior to the deposition.

1                   And when you read the emails, Judge, it's clear that  
2 the topic that's being discussed is whether there is an  
3 approval of the settlement, and Beth Andrews' response is  
4 redacted. We acknowledge that this is communication between  
5 counsel and client, and we (indiscernible) a case in the Second  
6 Circuit that confirms that it is well-established that  
7 communications between an attorney and his client, though made  
8 privately, are not privileged, and it is -- and it was  
9 understood that the information communicated in the  
10 conversation was to be conveyed to others.

11                  And I'll hold off on much argument except to say that  
12 it seems that Ms. Andrews is conveying her decision as to the  
13 approval of the GUC Trust's agreement, and we believe that she  
14 is going to testify independently today that she did approve  
15 it, and so we believe that under Second Circuit case law, we  
16 are allowed to see the unredacted email showing, in real time,  
17 her approval. That's issue number one, Judge. I'll let  
18 Mr. Karlan respond.

19                  THE COURT: Let me say first that I think you had  
20 attached the redacted emails to your email to my law clerk.  
21 I've read the redacted emails. I've not received the  
22 unredacted emails, so obviously I haven't read those.

23                  But why don't you describe the second issue as well,  
24 Mr. Hilliard, and then we'll hear from Mr. Karlan.

25                  MR. HILLIARD: Thank you, Judge.

1                   The second issue is a little clearer. It is an email  
2 that was shared with David Vanaskey's -- I believe it's his  
3 sons or his brothers. If the Court has the redacted email, the  
4 Court will see that a lawyer for Gibson Dunn sent to Beth  
5 Andrews and David Vanaskey an email on August 11th at 8:07, and  
6 that email, as produced to us, is redacted, but then David  
7 Vanaskey forwarded the email chain to a gentleman named Trey  
8 Vanaskey and Brett Vanaskey, who it's my understanding is  
9 family members of Mr. David Vanaskey.

10                  And so what we told Mr. Karlan is that if there is a  
11 privilege, it's broken when the information is freely shared  
12 with third parties who are not part of the privilege chain.  
13 And the response is that, though that may be, this is not  
14 relevant to Phase I, and therefore will not be produced.

15                  So, again, saving much of our argument, it simply  
16 seems that if the Court reviews the email unredacted, which  
17 Mr. Karlan has agreed to produce to the Court, then this issue  
18 can be resolved, as well. But the email does not enjoy a  
19 privilege anymore because of how it was shared. The question  
20 then becomes a relevant question under Phase I, which we have  
21 no way to respond to since ours is redacted.

22                  THE COURT: Okay. Go ahead, Mr. Karlan.

23                  MR. KARLAN: Good morning, Your Honor.

24                  THE COURT: Good morning.

25                  MR. KARLAN: Mitch Karlan, Gibson, Dunn & Crutcher,

1 for the GUC Trust. I'll take the issues in reverse order that  
2 Mr. Hilliard raised them.

3 In the Court's order of October 11th, in Paragraph 4  
4 where Your Honor ordered that discovery shall be limited in  
5 scope to the Phase I(a) issue, and the Phase I(a) issue on Page  
6 2 of the order is whether plaintiffs' settlement agreement is a  
7 binding agreement. I have no objection to sending to Your  
8 Honor the second of the documents that Mr. Hilliard referenced.  
9 It is our position that there is nothing in the redacted  
10 portion that falls within Phase I discovery.

11 I don't have any -- unless Your Honor has questions,  
12 I don't have more to say on that.

13 THE COURT: Well, it's hard for me to -- since the  
14 content of the email is redacted, I have no clue what it  
15 relates to.

16 MR. KARLAN: Of course. Of course, Your Honor, and  
17 that's why I'm saying I have no objection to getting it down by  
18 email to Your Honor now by -- in unredacted form.

19 THE COURT: Let me ask you this, Mr. Karlan. Do you  
20 agree that --

21 MR. KARLAN: It is not privileged, Judge. I do  
22 agree. I shouldn't say that, I'm sorry.

23 THE COURT: What's the subject -- without going into  
24 the details of it, tell me generally what's the content --  
25 what's the subject matter of the content. We agree it's not

1 privileged.

2 MR. KARLAN: The -- there was -- this is no secret,  
3 Judge. There was -- the email -- I think you have the redacted  
4 version. The email stated the 11th of August. There was a  
5 press report, copies of which have been produced by everybody  
6 in this case, about certain events that took place in the  
7 (indiscernible) proceeding.

8 And I've told -- I told counsel for the plaintiffs  
9 and the movants that in Mr. Gillette's email of 8:07 a.m., he  
10 forwards the link to that article, which everybody already had,  
11 to the clients, and then adds six words, and it's the six words  
12 that that we've not produced. It is not the end of the world  
13 if we end up producing it. It's just not relevant. I'm sorry  
14 this has taken up so much of Your Honor's time, but it's a  
15 commentary about the news article.

16 THE COURT: Okay. Email a PDF of an unredacted copy  
17 of the email to -- do you have my law clerk's email address on  
18 one of them?

19 MR. KARLAN: We do, Your Honor.

20 THE COURT: Okay. Promptly have it emailed --

21 MR. KARLAN: Yeah.

22 THE COURT: -- to my law clerk. I will look at it  
23 and very quickly enter an order whether it has to be produced.

24 MR. KARLAN: Will do, Your Honor. Now --

25 THE COURT: It sounds like you're making a lot of ado

1 about nothing, but we'll see.

2                   Okay. So that's how I'm going to deal with the  
3 second issue which is -- relates to the email chain. It's  
4 Bates numbered GUC0013904.

5                   MR. KARLAN: Your Honor --

6                   THE COURT: Hold on. Mr. Hilliard, are you satisfied  
7 with the -- probably not satisfied, but that's how I'm going to  
8 do it. I'm going to look at it and I'll rule very promptly.

9                   MR. HILLIARD: Your Honor, this is Bob Hilliard. I  
10 was always under the belief that the Court really needed to  
11 have the unredacted copies in order to make an informed  
12 decision, so it's fine with me.

13                   And if the Court decides that the Beth Andrews email  
14 is to be produced, I would again just point out that her  
15 deposition starts in about 45 minutes. And my team, who is in  
16 New York right now --

17                   THE COURT: As soon as it gets here and we end,  
18 you'll get a ruling.

19                   MR. HILLIARD: Thank you, Judge.

20                   THE COURT: Okay. Mr. Karlan, address the more  
21 serious issue, that the email chain -- and I guess on that  
22 email chain, two of the emails, one from a Gabriel Gillette to  
23 David Vanaskey, content is shown, and that's on August 14th,  
24 2017, it's shown as redacted, and the email below that is from  
25 Keith Martorana to Beth Andrews and others, David Vanaskey,

1 it's got some Ccs, and that's on August -- at 6:51 p.m. on  
2 August 4th. The first of the two was at 7:16 p.m. on  
3 August 14th.

4 The other -- there's nothing -- as I understand,  
5 nothing else in that email chain is redacted, correct?

6 MR. HILLIARD: That is correct, Your Honor.

7 THE COURT: All right. So go ahead and address that  
8 email, that email chain.

9 MR. KARLAN: Judge, on their face, they're  
10 privileged. I don't really understand the argument and I --

11 THE COURT: Well, when you say "on the face, they're  
12 privileged," I don't know what the content is. I think I would  
13 agree with -- because I've had this issue before, not all  
14 communications -- let me just ask you, do you disagree with  
15 this?

16 It's always been my understanding, and I've ruled on  
17 this in the past, that not all communications between a lawyer  
18 and his or her client are privileged. What it reflects as a  
19 business decision, it's not privileged. Do you disagree with  
20 that?

21 MR. KARLAN: I definitely do not disagree that not  
22 all communications between lawyers and clients are privileged.  
23 I'm not sure I would accept exactly your wording about the  
24 business decision point, but in general I don't disagree with  
25 what you're saying. And if the best -- if the most efficient

1 thing to do is for me to just send this down to you, I'm happy  
2 to do that.

3 THE COURT: It is. Include it promptly on an email  
4 to chambers.

5 What do you believe the correct rule is? Because  
6 you're not disagreeing that not all communications from a  
7 client to a lawyer are privileged, why do you believe these  
8 communications are privileged?

9 MR. KARLAN: I believe when Your Honor reads the  
10 emails, it will be clear that the general topic being discussed  
11 is the ongoing negotiations concerning the alleged agreement  
12 that the plaintiffs are seeking to enforce in this case.

13 THE COURT: All right. And let me ask Mr. Hilliard  
14 -- let me switch to Mr. Hilliard.

15 Mr. Hilliard, do you agree that the sender of each of  
16 these emails and the recipients of the emails would be covered  
17 by attorney-client privilege, assuming that the content of the  
18 emails was confidential lawyer-client communication? Because I  
19 don't know who all of the people are. I can see email  
20 addresses and who the Gibson Dunn lawyers are, et cetera, but  
21 do you agree that privilege wouldn't be broken by virtue of who  
22 the author and addressees of the two emails are?

23 MR. HILLIARD: Your Honor, Bob Hilliard. I do agree.

24 THE COURT: Okay. All right. So the only issue then  
25 is the content. And I take it, Mr. Hilliard, would you agree

1 that if -- what the content is, is the request for or the  
2 giving of legal advice with respect to entering into the  
3 proposed settlement, that that would be covered by privilege?

4 MR. HILLIARD: I do agree with that, as well, Judge.

5 The two of the three people in this discussion were just in the  
6 dark about the contents of it, but once it's emailed, it either  
7 says, approved, you can tell the plaintiffs we're signed off,  
8 or it says, I have issues with it. But whatever it says, it  
9 will be clear that there is no privilege and this is simply a  
10 direction that is intended to be forwarded to us, or if it is a  
11 concern between a client and counsel, then it stays privileged.

12 THE COURT: Okay.

13 MR. HILLIARD: But one way or the other, we'd like  
14 the Court to take a look.

15 THE COURT: So the record's clear, the -- this --  
16 it's the first issue that Mr. Hilliard raised relates to two  
17 redactions on a page that's been Bates numbered GUC0013894.

18 And for completeness, Mr. Karlan, when you attach --  
19 because it is a multi-page document, begins with 3894 and ends  
20 with 3897 in the Bates numbers, although the last page is blank  
21 except for a line across the top -- attach the full contents of  
22 the email. And I'm just going to enter a very short order  
23 saying following this hearing, the Court has reviewed  
24 unredacted copies of two email chains, and I'm just going to  
25 indicate the Court sustains or overrules the objection as --

1 obviously, as to one as privileged, and as to the other, the  
2 issue is relevance as to Phase I, the discovery on Phase I.  
3 And that's what -- you'll have it very promptly.

4               Okay. Anything else we need to talk about now?

5               MR. BERMAN: Yes, Your Honor. This is Steve Berman.

6               THE COURT: Go ahead, Mr. Berman.

7               MR. BERMAN: Your Honor, the issue I wanted to raise  
8 with you is whether information about what happened at the  
9 meeting between the GUC Trust lawyers, the Gibson Dunn lawyers,  
10 and General Motors in which the GUC Trust decided to do an  
11 about-face, whether that's Phase I or Phase II. At  
12 Mr. Williams' deposition, who was a lawyer for the GUC Trust,  
13 there were instructions not to answer questions, at least some  
14 of the questions that went to what was said at that meeting on  
15 the grounds that this is Phase II material.

16               THE COURT: All right. Let me --

17               MR. BERMAN: As Your Honor recalls --

18               THE COURT: -- let me -- hold on, let me put --  
19 because I've thought about this issue before in this case.  
20 Okay. No -- there are no instructions not to answer with  
21 respect to who said what during that alleged two-hour meeting.  
22 I want full discovery about it. There is no division, well,  
23 that statement was a Phase I issue, that statement's a Phase II  
24 issue. I want full discovery about who said what to whom at  
25 that meeting. What comes in as evident -- as evidence at the

1 trial, we'll see. But I'm not going to get into this sentence  
2 is Phase I, this sentence is Phase II. So we're going to get a  
3 complete -- as complete as possible a record about who said  
4 what to whom during that meeting. Okay. That's the Court's  
5 ruling.

6 MR. BERMAN: Thank you, Your Honor.

7 THE COURT: Any other issues I need --

8 MR. WEISFELNER: Finally, Your Honor --

9 THE COURT: Who's that?

10 MR. WEISFELNER: It's Ed Weisfelner.

11 THE COURT: Say it -- I'm sorry, I didn't hear it.

12 MR. WEISFELNER: Your Honor, the final issue --

13 THE COURT: Say it -- identify yourself again.

14 MR. WEISFELNER: I apologize, Judge. It's Ed  
15 Weisfelner.

16 THE COURT: Good morning, Mr. Weisfelner.

17 MR. WEISFELNER: Good morning. Your Honor,  
18 Mr. Karlan has taken the position that I may not ask any  
19 questions during discovery, and further has indicated his  
20 intention to seek to disqualify my firm.

21 We understood this issue to have been addressed and  
22 resolved in Paragraph 7 of the pretrial stipulation and  
23 scheduling order, to wit, and I'm quoting now:

24 "Wilmington Trust and New GM will not move to  
25 disqualify any law firm on the basis of the Rule 3.7

1 of the Model Rules of Professional Conduct, the  
2 witness advocate rule."

3 The sentence goes on, or the paragraph, rather, goes  
4 on to say:

5 "Counsel to the parties will meet and confer in an  
6 attempt to resolve any issues in connection with any  
7 members or associates of trial counsel's respective  
8 firms serving as witnesses and will bring any  
9 disputes to the Court for resolution if they cannot  
10 agree."

11 Your Honor, I thought that we did have a subsequent  
12 meet and confer and resolved remaining issues on the part of  
13 the GUC Trust and/or New GM, although this is the GUC Trust  
14 raising the issue, that no trial lawyer was going to  
15 cross-examine any adverse witness on topics that involved  
16 negotiations between trial counsel and the trial witness, an  
17 agreement that we continue to be prepared to abide by.

18 But Mr. Karlan has taken the unilateral position that  
19 I may not question any witnesses at depositions beyond the  
20 question of what was the subject matter of our personal  
21 negotiations. And has further advised us, as of Monday, that  
22 he was moving to disqualify my firm, and I think we need to  
23 resolve both issues.

24 THE COURT: Mr. Karlan?

25 MR. KARLAN: Well, Your Honor, first of all,

1 Mr. Weisfelner is correct in what Paragraph 7 said, and  
2 therefore we will not be making a motion to disqualify. I  
3 think I communicated that by email yesterday to everyone, but  
4 perhaps he did not see it.

5 I also agree with Mr. Weisfelner that, after entry of  
6 this order, there was a meet and confer, and I, too, as counsel  
7 for New GM, all thought that we did have an agreement on the  
8 subject of how we were going to handle the fact that  
9 Mr. Weisfelner and Mr. Weintraub and Mr. Steel all appear on  
10 the witness list.

11 My understanding, based on remarks made during that  
12 meet and confer by the other side, was that the way this was  
13 going to be handled is that Mr. Berman and Mr. Hilliard were  
14 going to try the case, and that Mr. Weisfelner, Mr. Steel, and  
15 Mr. Weintraub were not going to be trial counsel, and that was  
16 acceptable to us.

17 Apparently, either I misheard or misunderstood or  
18 there's been some change of heart. It doesn't matter. There's  
19 clearly no agreement at the moment, and what the order provides  
20 is that since there's no agreement, we're supposed to bring it  
21 to you. I would respectfully suggest -- I know Your Honor  
22 doesn't like to be burdened with papers, but we'd like to put  
23 in two or three pages in a letter explaining why it's  
24 inappropriate in the particular circumstances of this case for,  
25 let's just use as an example Mr. Weisfelner to be vouching for

1 his own credibility in opening or closing or conducting any  
2 part of the trial when we did agree not to disqualify his firm  
3 or anybody's firm. I don't see any reason for doing that here.

4           But I do think that it would be unusual for lawyers  
5 who are the key witnesses in the case -- and I'm including my  
6 own firm -- to be conducting any part of the examinations or  
7 the arguments.

8           THE COURT: Mr. Karlan, let me ask this: The issue  
9 of -- it does seem to me that the issue of whether Weisfelner,  
10 Steel, and Weintraub may be advocates at the trial, I don't  
11 need to decide today. Are you objecting -- and I don't have  
12 the stipulations in front of me. I -- you know, I'm not ruling  
13 on that in the abstract. Are you objecting to Mr. Weisfelner  
14 conduct -- asking questions at depositions?

15           MR. KARLAN: I won't object to him asking questions  
16 today of Ms. Andrews because, to the best of my knowledge, the  
17 two have never met and no part of the case involves their  
18 face-to-face communications.

19           I did object since it's clear we're going to have to  
20 resume Mr. Williams' deposition based on Your Honor's ruling  
21 earlier from a few moments ago. I do object and ask that he  
22 not question Mr. Williams at deposition for all the same  
23 reasons.

24           It -- and I thought -- I really thought we had  
25 agreement on this, so I don't understand what the issue is.

1 There are 25 lawyers on the other side.

2 MR. WEISFELNER: Your Honor, if I can? It's Ed  
3 Weisfelner again.

4 THE COURT: Go ahead.

5 MR. WEISFELNER: I believe that to the extent I were  
6 propounding questions to a Gibson Dunn lawyer, or any other  
7 lawyer with whom I negotiated on the subject matter of our  
8 negotiations, Mr. Karlan would be right. Mr. Karlan blanketly  
9 refused to allow me to pose any questions before he heard the  
10 questions.

11 We will live up to our agreement that no trial  
12 witness from my firm or any of the plaintiffs' firms will ask  
13 questions of parties with whom we negotiated about those  
14 negotiations. But to ask general questions, and in particular  
15 the issues that I wanted to raise with Mr. Williams, was all  
16 about his view of whether or not there was a binding agreement.  
17 That doesn't involve our direct negotiations.

18 THE COURT: Mr. Karlan?

19 MR. TECCE: Your Honor, this is James Tecce of Quinn  
20 Emanuel for New GM. May I be heard for a minute?

21 THE COURT: Go ahead.

22 MR. TECCE: Thank you, Your Honor.

23 Just very briefly, I wanted the record to be clear  
24 that it was not New GM's agreement to conduct the trial in the  
25 way the plaintiffs have described. With respect to

1 depositions, we don't take a position on that.

2 I would like to state, though, that for purposes of  
3 conducting the trial, New GM would have an objection to any  
4 attorney who is a witness being permitted to then participate  
5 in oral argument, especially to the extent that it touches on  
6 evidentiary issues that implicates that attorney's testimony.

7 We would be opposed to people being --

8 THE COURT: Mr. Tecce?

9 MR. TECCE: -- permitted to testify from the podium.

10 THE COURT: Mr. Tecce?

11 MR. TECCE: That's not a today issue --

12 THE COURT: Mr. Tecce?

13 MR. TECCE: -- but I do want our position on that to  
14 be made clear.

15 THE COURT: Mr. Tecce, that's not today's issue.

16 MR. TECCE: Agreed.

17 THE COURT: So I don't want to hear about it today.  
18 I haven't decided whether you can participate in the trial yet,  
19 and I don't know whether, when, or if I will, so let's make  
20 clear you may not even have standing to object. But Mr. Karlan  
21 has indicated that -- I'm not deciding -- you all will have to  
22 tee up this issue about what, if any, role any of the trial  
23 witnesses may have as an advocate.

24 The issue for today, though, let me ask Mr. Karlan.  
25 Mr. Weisfelner has stated that he does not intend to ask any

1 deponent about communications, discussions between  
2 Mr. Weisfelner and the witness. Is that satisfactory for  
3 moving forward today?

4                   What I don't like is in the middle of a dep -- you  
5 know, a deposition starts in an hour and you are raising an  
6 issue whether Weisfelner can ask questions at it. You should  
7 have known that this was an issue and you could have presented  
8 it to me. And if I needed letter briefs, I would have asked  
9 for them. I don't like at 9:35 in the morning with a  
10 ten o'clock deposition and me having a ten o'clock calendar,  
11 being told that you object Weisfelner asking questions.

12                  Do you object to Weisfelner asking questions that  
13 don't relate to any conversations he had with any of the  
14 deponents?

15                  MR. KARLAN: Judge, the first time I knew -- the  
16 answer to -- for today is the only deposition today is  
17 Ms. Andrews, and I've already said, as clearly as I am able to  
18 say, that I don't object to him asking questions of  
19 Ms. Andrews.

20                  THE COURT: When is it next deposition scheduled in  
21 which you do have an objection?

22                  MR. KARLAN: There may be a deposition on Monday of  
23 Mr. Martonara [sic], and we'll have to resume -- we don't have  
24 a date -- we'll have to resume Mr. Williams' deposition in  
25 light of Your Honor's ruling.

1                   THE COURT: Well, you better make a motion -- if  
2 you're going make a motion, you better do it by noon tomorrow,  
3 and any opposition by noon on Friday. And I'm going to limit  
4 you to ten pages each.

5                   You may be aware that I issued an opinion a couple of  
6 weeks ago where I dealt with Rule 3.7, where I disqualified  
7 counsel. It's on appeal, but I did issue an opinion that dealt  
8 with the lawyer advocate rule. I'm not saying that it's  
9 applicable here, but I just want to be sure you're all aware  
10 that I did issue an opinion on this rule and did disqualify  
11 counsel.

12                  Anything else for today that needs to be -- because I  
13 want to go look at -- are the emails sent, Mr. Karlan? Did you  
14 forward the email with the documents?

15                  MR. KARLAN: No, Judge, I've been on the phone with  
16 you. I will instantly as soon as we get --

17                  THE COURT: Well, you've got a lot of colleagues.  
18 There's nobody else sitting there with you who could have done  
19 this?

20                  MR. KARLAN: Judge, we'll do it right now.

21                  THE COURT: Do it right now.

22                  Everybody stay on the line. I'm going to look at it.  
23 Get it out right now. Everybody stay on the line. I will look  
24 at it. I will rule before this call ends.

25                  We're going to recess until I can look at the content

1 of the unredacted emails.

2 MR. KARLAN: Judge, the --

3 MR. HILLIARD: Your Honor --

4 MR. KARLAN: Judge, may I have your email one more  
5 time? It's not in this room with us. I'm sorry about that.

6 THE CLERK: Hi, Mr. Karlan, Lauren --

7 THE COURT: Wait. Wait. Send it to Lauren,  
8 L-A-U-R-E-N, underscore, Wagner, W-A-G-N-E-R, at NYSB -- B, as  
9 in boy -- dot UScourts.gov.

10 MR. KARLAN: Lauren\_Wagner at NYSB, like boy, dot  
11 UScourts.gov.

12 THE COURT: Correct. Okay. Everybody else stay on  
13 -- everybody stay on the line. You can put your phones on  
14 mute. Are you all together in the same room?

15 MR. WEISFELNER: No, Your Honor, we're not.

16 If I could just trouble you for one more issue while  
17 we wait for the transmittal to occur. It'll be very quick.

18 THE COURT: Go ahead.

19 MR. WEISFELNER: Your Honor, I'm going to suggest  
20 that Your Honor impose a rule that during the course of  
21 depositions, lawyers for all parties refrain from dropping  
22 F-bombs on the record.

23 THE COURT: Let me just put it this way. I take -- I  
24 don't like anything going on in a deposition that is -- doesn't  
25 involve questions, answers, non-speaking objections, and I

1 expect everybody to be engaging in professional conduct. You  
2 know, beyond that, Mr. Weisfelner, I just -- you know, you'll  
3 all live with it.

4 MR. WEISFELNER: Yes, sir.

5 THE COURT: If there's abuse, you'll bring it to my  
6 attention, but this I'm not going to do on the fly. I'll be  
7 back on the bench after I've reviewed the emails and I'll give  
8 you an answer.

9 (Recess taken at 9:39 a.m.)

10 (Proceedings resumed at 9:45 a.m.)

11 THE COURT: All right. This is Judge Glenn. We're  
12 back on the record in Motors Liquidation, 09-50026.

13 The Court has reviewed the unredacted emails. Let me  
14 deal first with the email with two redactions, and it's -- the  
15 Bates page is GUC0013894. The Court rules that the redacted  
16 matter is not protected by attorney-client privilege. It  
17 reflects a client's statement regarding the facts, not  
18 privilege. There's no request for or the giving of legal  
19 advice. Both the redactions that are made deal with whether  
20 business people -- what their position was with respect to the  
21 agreement. There was no request for advice. So the privilege  
22 objections to the two redactions on GUC0013894 are overruled.

23 The second objection dealt with GUC0013904. The  
24 redacted email from David Vanaskey to Trey Vanaskey said, see  
25 link on GM deal. Below that was an email from Gabriel Gillette

1 at Gibson Dunn to several people, including David Vanaskey.  
2 The content of that is redacted.

3 The objection that Mr. Karlan has stated is one of  
4 relevance to Phase I discovery. The objection is overruled.  
5 When you see the content, it contains, in addition to one  
6 declarative sentence from Gabriel Gillette to the recipients,  
7 it has a link to a Bloomberg article that deals with this  
8 matter. I took a quick look at the Bloomberg article, and it  
9 seems to me that the Bloomberg article deals in part with  
10 whether there was a binding agreement, which is a Phase I  
11 issue. Consequently, the objection on relevance to Bates Page  
12 GUC0013904 is also overruled. The unredacted email needs to be  
13 produced. That's the Court's ruling.

14 I've indicated very short deadlines on any motion.  
15 If you can't work out -- I think what I would suggest on the  
16 issue of the lawyer as advocate -- the witness as advocate  
17 rule, that you continue -- I give very short deadlines. I'm  
18 familiar with the law about Rule 3.7. It's arising here in a  
19 somewhat unusual context. I would urge you all to see if you  
20 can reach an agreement about how to deal with this. If you  
21 can't, I've given you the deadlines, very short deadlines on  
22 filing briefs, and I will do my best to give you a ruling as  
23 quickly as I can. We're adjourned.

24 THE CLERK: All rise.

25 (Proceedings concluded at 9:49 a.m.)

## C E R T I F I C A T I O N

3 I, Ilene Watson, court-approved transcriber, hereby  
4 certify that the foregoing is a correct transcript from the  
5 official electronic sound recording of the proceedings in the  
6 above-entitled matter, and to the best of my ability.

Elie Watson

10 ILENE WATSON, AAERT NO. 447 DATE: November 16, 2017  
11 ACCESS TRANSCRIPTS, LLC

